

ORIGINAL

NEW APPLICATION



0000186720

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission  
COMMISSIONERS **DOCKETED**

2018 MAR 12 P 12:47

TOM FORESE - Chairman  
BOB BURNS  
ANDY TOBIN  
BOYD DUNN  
JUSTIN OLSON

**MAR 12 2018**

**DOCKETED BY**

In the matter of:

THOMAS P. MADDEN and Leslie Madden,  
husband and wife,

Respondents.

DOCKET NO. S-21042A-18-0059

**NOTICE OF OPPORTUNITY FOR HEARING  
REGARDING PROPOSED ORDER TO CEASE  
AND DESIST, ORDER FOR RESTITUTION,  
ORDER FOR ADMINISTRATIVE  
PENALTIES, AND ORDER FOR OTHER  
AFFIRMATIVE ACTION**

**NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondent Thomas P. Madden has engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

**I.**

**INTRODUCTION**

1. Madden's livelihood consists of offering and selling stock in start-up companies and blank-check companies.<sup>1</sup> From October 2012 through July 2016, Madden offered or sold stock to at least 88 investors in over 180 transactions.

2. Madden's securities offers and sales make him a dealer under A.R.S. § 44-1801(9), i.e. a person who engages part- or full-time as an agent, broker or principal in the business of offering, buying, selling or otherwise dealing in securities.

<sup>1</sup> The Securities and Exchange Commission describes blank-check companies as follows: "A blank check company is a development stage company that has no specific business plan or purpose or has indicated its business plan is to engage in a merger or acquisition with an unidentified company or companies, other entity, or person. These companies typically involve speculative investments and often fall within the SEC's definition of 'penny stocks' or are considered 'microcap stocks.'"



1           10. In its filings with the Securities and Exchange Commission, Summit describes its  
2 business as “merchant banking and strategic business advisory services.”

3           11. Summit’s financial services included helping companies raise capital and assisting  
4 companies in becoming publicly-traded. In exchange for its services, Summit would receive an equity  
5 position in its clients.

6           12. Summit frequently formed blank-check, shell corporations to merge with existing  
7 companies. Summit would own all or most of the equity in the shell company. After merging the  
8 shell company to the existing company, Summit would receive equity in the existing company.

9           13. From late 2011 through 2014, Madden was Summit’s general manager/senior  
10 manager and a 25% owner. His work involved, among other things, helping clients prepare to go  
11 public and assisting clients in raising capital by introducing them to investors and brokers. In early  
12 2015, Summit changed Madden’s title to “Of Counsel” when the State of Washington began  
13 investigating Madden; while his title changed, Madden continued to work for Summit in the same  
14 capacity. (Washington’s investigation resulted in Washington issuing a consent order against  
15 Madden on October 18, 2016, that found Madden in violation of the state’s securities registration and  
16 anti-fraud provisions.)

17           14. For approximately his first year of employment at Summit, Madden received  
18 compensation in the form of a monthly salary and stock of the corporations that Summit formed for  
19 mergers, the entity that survived the merger, and other client companies. After working at Summit  
20 for a time, Madden’s compensation consisted solely of stock from Summit’s clients, shell companies,  
21 and merger entities.

22           15. In April 2011, Summit formed, Dignyte, Inc., a blank-check, shell corporation with  
23 no operations.

24           16. In 2014, Dignyte merged with eWellness Healthcare Corporation, a start-up company  
25 formed in Nevada in 2013. eWellness describes itself as “a Los Angeles based medical technology  
26

1 company that combines digital physical therapy with progressive in-home exercise programs that  
2 includes active real-time monitoring and assessment by physical therapists.”

3 17. For its entire existence, eWellness had no revenue and no profits. eWellness’s annual  
4 SEC filings report net losses of \$466,636 in 2013, \$1,325,010 in 2014, \$1,554,908 in 2015, and  
5 \$12,460,694 in 2016.

6 18. eWellness was a client of Summit and Summit received eWellness stock in exchange  
7 for financial services.

8 19. As a Summit employee, Madden provided several services for Dignyte and eWellness  
9 including introducing potential investors to eWellness and Summit executives, doing mini roadshows  
10 for broker-dealers, and forwarding email from eWellness’s manager to potential investors.  
11 Additionally, Madden introduced eWellness to Summit.

12 20. Madden received stock in Dignyte and eWellness in exchange for his services. He  
13 also purchased 350,000 Dignyte shares for \$.10/share.

14 21. Another company for which Summit provided services was Jameson Stanford Mining  
15 Corp. In 2012, Jameson described itself as follows: “Through our wholly owned subsidiary, Bolcán  
16 Mining, we are a minerals exploration company focused on acquiring and consolidating mining  
17 claims and mineral leases with potential production and future growth through exploration  
18 discoveries.”

19 22. Effective December 15, 2014, Jameson changed its name to Star Mountain Resources,  
20 Inc. to reflect its focus on a mining district in Utah.

21 23. Jameson/Star Mountain filed Form 10-Ks with the SEC from 2013 through 2016.  
22 These reports disclose several risks inherent to a mining company, including regulatory, market  
23 fluctuation, and environmental risks. The 10-Ks also disclose that Jameson/Star Mountain’s  
24 operations included several risks, including dependence on a single executive, lack of capital, lack  
25 of operations, lack of income, and litigation. The 10-Ks also disclose risks related to Jameson/Star  
26 Mountain’s common stock, including that the shares are illiquid, may never meet the listing

1 requirements of a national exchange, are subject to the SEC's rules for "penny stocks" which include  
2 assessing the buyer's suitability and disclosing risk.

3 24. The 10-Ks also showed that Jameson/Star Mountain generated less than \$90,000 of  
4 revenue in 2011 and no revenue after that. It has not generated any profits. Rather, it incurred net  
5 losses since its inception, including net losses of \$54,258 in 2011, \$648,271 in 2012, \$2,978,706 in  
6 2013, \$4,156,596 in 2014, and \$6,696,000 in 2015.

7 25. As a Summit employee, Madden performed services for Jameson/Star Mountain that  
8 were similar to those he performed for Dignyte/eWellness, including introducing potential investors  
9 to Star Mountain executives and doing mini roadshows for broker-dealers.

10 26. In exchange for his services, Madden received stock in Jameson/Star Mountain.  
11 Madden also purchased some shares from Jameson.

12 27. From October 2012 through July 2016, Madden offered and sold, within and from  
13 Arizona, his Dignyte/eWellness, Jameson/Star Mountain stock to, and entered stock-backed loans  
14 (i.e. loans where Madden could repay the loan with stock) with, at least 88 persons in 180 transactions  
15 for a total of \$3,988,417. He repaid a total of \$639,310 to these purchasers.

16 28. The purchasers were persons that Madden knew from his church, friends, and  
17 acquaintances of these persons.

#### 18 **Omissions and Misrepresentations**

19 29. In connection with the offer and sale of his stock, Madden failed to disclose or  
20 misrepresented several items to investors.

21 30. Based on Madden's representations, several investors expected a return on their  
22 Jameson/Star Mountain investment in a short timeframe. Madden told at least one investor that  
23 Jameson/Star Mountain stock was a "bargain" and would soon increase in value. Madden told another  
24 investor that the stock could be purchased for \$.75 and that they "will be opening it near \$2.00."

25 31. In fact, the company's value consisted of ownership of mineral rights; it had no mining  
26 operations, had only earned a small revenue in one year of its existence, and had never had profits.

1           32.     Madden failed to disclose to Jameson/Star Mountain investors the risks relevant to the  
2 mining industry and to Jameson/Star Mountain's operations.

3           33.     Madden also failed to disclose to investors risks connected Jameson/Star Mountain's  
4 common stock, including that the stock was sold in private transactions and listed on over-the-counter  
5 stock markets and bulletin boards resulting in limited liquidity, difficulty in determining market price  
6 due to infrequent trading and potential additional disclosure requirements for "penny stocks" under  
7 SEC rules.

8           34.     Madden told some investors that Dignyte/eWellness's value would soon rise  
9 significantly, led other investors to believe that they would soon realize a gain on their investment,  
10 and told at least one investor that eWellness shares would soon "go public."

11          35.     Dignyte, in fact, was a blank-check, shell company with no operations that existed to  
12 merge with eWellness. Before and after the merger, Dignyte/eWellness had no revenue or profits. To  
13 the contrary, it had throughout its existence incurred significant, annual net losses.

14          36.     Madden failed to discuss the risks involved with purchasing Dignyte/eWellness  
15 stocks, which were restricted shares and sold only in private transactions and on over-the-counter  
16 markets. These risks include limited liquidity, difficulty in determining market price due to infrequent  
17 trading, steps and costs required to sell restricted shares, and potential additional disclosure  
18 requirements for "penny stocks" under SEC rules.

19          37.     Madden represented to investors that he had experience in evaluating stock, was a  
20 consultant in the securities industry, a venture capitalist, or that he was in the business of investing.  
21 Madden failed to disclose to offerees information that would have been material in assessing  
22 Madden's business acumen and competence with finances, including two lawsuits against him based  
23 on stock offers and sales, and three loans that he was unable to timely pay back, two of which were  
24 never paid back and one that resulted in a civil judgment:

25               a)     A May 17, 2012, civil judgment of \$26,373 in principal plus attorney's fees  
26 from King County Superior Court, State of Washington, later domiciled in Arizona CV2012-012952.



1 The judgment stemmed from \$65,000 of stock sales where Madden sold stock to investors and the  
2 stock lost almost all of its value.

3 b) A March 19, 2008, civil judgment of \$497,561 in King Superior Court –  
4 Seattle, against Madden and Madden Consulting Inc. are the debtors. The lawsuit involved Madden  
5 offering to sell stock to a potential investor. When the investor insisted that he receive promissory  
6 notes instead, Madden sold him promissory notes that could be paid by cash or by stock.

7 c) An October 14, 2009, judgment creditors received a judgment of \$157,500 in  
8 Utah County District Court, against Madden and his entity, Nascent Value, LLC, for a loan that  
9 Madden received from the judgment creditors.

10 d) On several occasions, Madden also borrowed money from an Arizona resident  
11 that had purchased \$300,000 in stock from Madden, including one loan for \$75,000. Madden gave  
12 the investor two \$37,500 post-dated checks when she gave him the money. Then, apparently unable  
13 to cover the checks when the date arrived, Madden asked her to hold on to the checks. On a later  
14 date, Madden gave the investor two new post-dated checks, and asked her to tear up the old ones;  
15 both checks cleared when she cashed them.

16 e) In January, February and July 2015, Madden received loans totaling at least  
17 \$150,000 from another Arizona resident that had purchased over \$300,000 in stock from Madden.  
18 Madden paid back \$30,000 of the loans. He also wrote two other checks to pay back the loans, both  
19 of these checks bounced.

20 38. The risks associated with Madden's choosing and selling stock in these startup  
21 companies has played out in a worst-case scenario. Dignyte/eWellness and Jameson/Star Mountain  
22 have failed to operate as viable businesses, they have only incurred losses, and their stock is currently  
23 worth only a few pennies a share, representing almost a total loss for people who purchased stock  
24 from Madden.

V.

**VIOLATION OF A.R.S. § 44-1842**

**(Transactions by Unregistered Dealers or Salesmen)**

39. Respondent offered or sold securities in the form of stocks within or from Arizona while not registered as a dealer or salesman pursuant to Article 9 of the Securities Act.

40. This conduct violates A.R.S. § 44-1842.

VI.

**VIOLATION OF A.R.S. § 44-1991**

**(Fraud in Connection with the Offer or Sale of Securities)**

41. In connection with the offer or sale of securities within or from Arizona, Respondent directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Respondent's conduct includes, but is not limited to, the following:

a) Representing to several investors that stock in Dignyte/eWellness and Jameson/Star Mountain would soon rise in value without disclosing, among other things, the risks associated with purchasing stock in startup companies and non-publicly-traded companies, these companies' failure to generate revenue or have any significant operations, risks associated with a mining company.

b) Failing to disclose that previous clients had sued and obtained judgments against Respondent for money they lost when purchasing investments from or lending money to Respondent and that Respondent borrowed money from other clients that he was unable to timely or completely repay.

42. This conduct violates A.R.S. § 44-1991.



**VII.**

**REQUESTED RELIEF**

The Division requests that the Commission grant the following relief:

1. Order Respondent to permanently cease and desist from violating the Securities Act pursuant to A.R.S. § 44-2032;
2. Order Respondent to take affirmative action to correct the conditions resulting from Respondent's acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
3. Order Respondent to pay the state of Arizona administrative penalties of up to \$5,000 for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;
4. Order that the marital community of Respondent and Respondent Spouse be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and
5. Order any other relief that the Commission deems appropriate.

**VIII.**

**HEARING OPPORTUNITY**

Respondent and Respondent Spouse may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If Respondent or Respondent Spouse requests a hearing, the requesting respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's website at <http://www.azcc.gov/divisions/hearings/docket.asp>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or

ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Kacie Cannon, ADA Coordinator, voice phone number (602) 542-3931, e-mail [kcannon@azcc.gov](mailto:kcannon@azcc.gov). Requests should be made as early as possible to allow time to arrange the accommodation. Additional information about the administrative action procedure may be found at <http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>

#### **IX.**

#### **ANSWER REQUIREMENT**

Pursuant to A.A.C. R14-4-305, if Respondent or Respondent Spouse requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's website at <http://www.azcc.gov/divisions/hearings/docket.asp>.

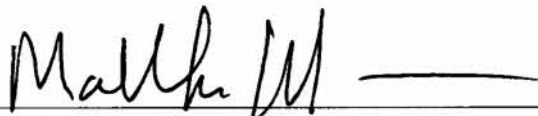
Additionally, Respondent or Respondent Spouse must serve the answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix, Arizona, 85007, addressed to Ryan Millecam.

The answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering respondent or respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

1 When the answering respondent intends in good faith to deny only a part or a qualification of  
2 an allegation, the respondent shall specify that part or qualification of the allegation and shall admit  
3 the remainder. Respondent waives any affirmative defense not raised in the Answer.

4 The officer presiding over the hearing may grant relief from the requirement to file an Answer  
5 for good cause shown.

6 Dated this 12<sup>th</sup> day of March, 2018.

7  
8   
9 Matthew J. Neubert  
Director of Securities  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26